IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 1ST JANUARY 2007 / 11 POUSHA 1928

Crl.MC.No. 171 of 2006()

AGAINST THE ORDER IN 6186/05 IN
ST.6185/2005 of JUDL. MAGISTRATE OF FIRST CLASS-IV (MOBILE), TRIVANDRUM

.....

PETITIONER/ACCUSED:

---

1. LALU JOSEPH, LIAISON SECRETARY,
   KARUNYAM CHARITY SHOW-U.K.,
   NO.2, SUBHASH NAGAR, THIRUVANANTHAPURAM.

2. C.SASIDHARAN PILLAI, ADVOCATE,
   ADVISOR, KARUNYAM CHARITY SHOW-U.K.,
   PERINGANAMADOM LANE, SREEKANTESWARAM WEST,
   THIRUVANANTHAPURAM.

BY ADV. SRI.BLAZE K.JOSE

RESPONDENTS/COMPLAINANT&STATE:

---

1. STATE OF KERALA, REP. BY
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. THE KERALA TRAVELS INTERSERVE LTD.,
   L.M.S. BUILDING, MUSEUM JUNCTION, PALAYAM,
   THIRUVANANTHAPURAM, REPRESENTING BY THE
   MANAGING DIRECTOR K.C.CHANDRAHASAN,
   S/O.LATE P.G.CHELLAPPAN PILLAI, 6 A, SKY LINE
   SYMPHONY, VAZHUTHACAUD, THIRUVANANTHAPURAM.

BY ADV. SRI.P.GOPALAKRISHNAN NAIR
PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 01/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.171 of 2006

Dated this the 1st day of January 2007

O R D E R

The petitioners are accused in a prosecution under Section 138 of the Negotiable Instruments Act. They have admittedly signed the cheques. The cheques were admittedly handed over to the second respondent/complainant herein. The petitioners have come to this court with the prayer that the prosecution initiated against them under Section 138 of the Negotiable Instruments Act may be quashed.

2. What is the reason to invoke the powers under Section 482 Cr.P.C. The learned counsel for the petitioner submits that though the petitioners are the signatories who have affixed their signatures in the cheque, the real liability is that of a charitable society based in U.K and that the said society having not been arrayed as an accused, the prosecution is bound to fail. It is by now settled that it is not essential to array the entity, on whose behalf the cheque is issued, as an accused invariably in all prosecutions under Section 138 of the Negotiable Instruments Act. Of course, in order to justify a conviction, a finding must be

entered that such drawer is legally liable and is guilty. However the fact that the entity on whose behalf the petitioners have admittedly signed the cheques is not arrayed as an accused is no valid or legal reason to quash the proceedings against the petitioners. That contention cannot stand.

3. Alternatively, it is contended that the matter is almost settled and if some further time were given, the entire liability shall be discharged and composition shall be reported to the learned Magistrate. The parties are always at liberty to move the learned Magistrate to withdraw the complaint or to report composition. I find no reason to quash the proceedings or for this court to grant any further time to settle the disputes. In a matter like this, the petitioners can settle the disputes. The learned counsel for the respondent/complainant submits that the matter has not been settled so far.

4. In any view of the matter, I am satisfied that the prayer to quash the proceedings is without any basis or reasons. This Criminal Miscellaneous Case in these circumstances deserves to be dismissed. Needless to say, if the parties have

settled the matter, they shall be at liberty to report the settlement or withdraw the case.

This Criminal Miscellaneous Case is accordingly dismissed with the above observations.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006